

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Vincent Bryan & Alex Kunzler § Attorney Docket No.: 31132.59
§ PC904.03
Serial No.: 09/776,394 § Customer No. 46333
§
Filed: February 2, 2001 § Group Art Unit: 3738
§
For: Human Spinal Disc Prosthesis § Examiner: Stewart, Alvin J.
§
§ Confirmation No.: 1424

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Certificate of Service
I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via EFS-Web on July 16, 2007.

Gayle Conner

PETITION UNDER 37 CFR §1.183 FOR
WAIVER OF SIGNATURE REQUIREMENT
FOR NONSIGNING INVENTOR OF SUPPLEMENTAL DECLARATION

The above-identified reissue application was filed on February 2, 2001 and received U.S. Serial No. 09/776,394. The joint inventors named in the reissue application are (1) Vincent Bryan and (2) Alex Kunzler. As described in more detail below, inventor Vincent Bryan has been provided with a copy of the supplemental declaration and the pending reissue claims, and it has been concluded that he cannot be reached to sign the supplemental declaration. Accordingly and in accordance with MPEP §1414.01(III.), this Petition is being filed to request acceptance of this supplemental declaration under 37 C.F.R. §1.183 without the participation of joint inventor Vincent Bryan. The other joint inventor, Alex Kunzler, has signed an accompanying Supplemental Declaration on behalf of himself, and on behalf of non-signing inventor, Vincent Bryan.

The last known address of non-signing inventor Vincent Bryan is 342 Silica Road NW, Quincy, WA 98848. This is a home residence address and, to the best of the undersigned's knowledge, Dr. Bryan still resides at this address. The following are facts pertinent to this Petition:

1. The present application is a reissue of U.S. Serial No. 08/856,513 filed May 15, 1997 and issued as U.S. Pat. No. 5,865,846 ("the '846 patent"), which is a division of application Ser. No. 08/681,230, filed on July 22, 1996 and issued as U.S. Pat. No. 5,674,296, which is a continuation-in-part of application Ser. No. 08/339,490, filed on November 14, 1994 and now abandoned. The reissue application is assigned of record to Warsaw Orthopedic, Inc. located at 2500 Silveus Crossing, Warsaw, Indiana 46581. The current Assignment for the reissue application has been recorded in the Assignment records of the U.S. Patent Office at Reel 019064, Frame 0771.
2. In 1994, Dr. Bryan founded Spinal Dynamics Corporation ("Spinal Dynamics"). Spinal Dynamics was acquired by Medtronic Sofamor Danek, Inc. on October 11, 2002. After the acquisition, Dr. Bryan pursued retirement and other business ventures unrelated to Spinal Dynamics. Despite repeated attempts to contact Dr. Bryan at both his last known home and business addresses, as described in detail below, he cannot be reached.
3. The present reissue application was filed in February, 2001 by Spinal Dynamics and, after the acquisition, was assigned to Medtronic Sofamor Danek and later to the related entity, Warsaw Orthopedic, Inc. Substantive prosecution of the claims in the present reissue application has concluded with the Examiner's indication that all pending claims will be allowable upon the completion of formal matters including the

submission of a supplemental declaration. The supplemental declaration has been signed by the other inventor, Alex Kunzler.

4. On May 16, 2007, a letter, a copy of the declaration, a copy of the presently pending claims, and a copy of the '846 patent was sent via certified U.S. mail to Dr. Bryan's home address. Having previously found this inventor to be non-responsive in other cases, the same letter and a copy of the declaration was also sent via Federal Express to Dr. Bryan's home address. The Federal Express package was signed for by "T. Conner" on May 17, 2007 (see Exhibit A). No return receipt has been received from the U.S. Postal Service.
5. On June 1, 2007, a call was placed to Dr. Bryan's business (located at 344 Silica Rd., adjacent to his home at 342 Silica Rd.). The party who answered the phone, recommended sending the package to the business address with assurances that Dr. Bryan would receive the package there also. Accordingly, on June 1, 2007, a second package was sent via both certified mail and via Federal Express to Dr. Bryan's business address at 344 Silica Road NW, Quincy, WA 98848. The Federal Express package was signed for by "B. Lybbert" on June 4, 2007 (see Exhibit B). Records from the U.S. Postal Service indicate that delivery was attempted and notice left (see Exhibit C). No return receipt has been received from the U.S. Postal Service.
6. On June 12, 2007 a voicemail message was left on Dr. Bryan's home phone number regarding the four sent packages.
7. On July 2, 2007, complete packages were sent by U.S. Certified Mail to both Dr. Bryan's home address (342 Silica Road NW) and business address (344 Silica Rd.). On this same date, complete packages were also sent by Federal Express to Dr. Bryan's

home and business addresses. Records from the U.S. Postal Service indicate that delivery was attempted and notice left (see Exhibit D), and records from Federal Express indicate that both Federal Express packages were delivered and signed for by T. Robertson on July 3, 2007. (see Exhibit E).

8. As of this date, the undersigned has not received the executed Supplemental Declaration from Dr. Bryan, and further does not expect to receive the Supplemental Declaration.

9. Applicants submit that after diligent effort, the inventor, Vincent Bryan, cannot be reached to sign the Supplemental Declaration. His last known address is as follows:

Dr. Vincent Bryan

342 Silica Road NW

Quincy, WA 98848

UNITED STATES OF AMERICA

9. The undersigned submits that the Supplemental Declaration For Reissue Patent Application is made by the other signing inventor, Alex Kunzler, on behalf of himself and on behalf of the nonsigning inventor, Vincent Bryan and further requests waiver of the signature requirement of the nonsigning inventor. (Signed declaration of Alex Kunzler at Exhibit F).

10. The petition fee under 37 C.F.R. §1.183 and 1.17(f) (Fee Code 1462) of \$400.00 is filed herewith. The Commissioner is hereby authorized to charge any fee deficiencies or credit any overpayment to the Deposit Account of Haynes and Boone, LLP 08-1394.

Appl. No. 09/776,394
Petition Under 37 CFR 1.183

Attorney Docket No. 31132.59 / PC904.03
Customer No. 46333

It is respectfully requested that the Commissioner grant this Petition, and accept this application for examination under 37 C.F.R. §1.183, without the participation of non-signing inventor Vincent Bryan.

Respectfully submitted,



Julie M. Nickols
Registration No. 50,826
(972) 739-8640

Date: July 16, 2007
HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: (972) 739-8640
Facsimile: (214) 200-0853
File: 31132.59 / PC904.03

Enclosures: Exhibits A-F

R-169305.1

Conner, Gayle

From: TrackingUpdates@fedex.com
Sent: Thursday, May 17, 2007 1:55 PM
To: Conner, Gayle
Subject: FedEx Shipment 790249374817 Delivered

This tracking update has been requested by:

Company Name: Haynes and Boone, LLP

Name: Julie Nickols

E-mail: 'not provided by requestor'

Our records indicate that the following shipment has been delivered:

Tracking number:	790249374817
Reference:	31132.59
Ship (P/U) date:	May 16, 2007
Delivery date:	May 17, 2007 11:51 AM
Sign for by:	T.CONNER
Delivered to:	Receptionist/Front Desk
Service type:	FedEx Priority Overnight
Packaging type:	FedEx Envelope
Number of pieces:	1
Weight:	0.50 lb.

Shipper Information	Recipient Information
Julie Nickols	Vincent Bryan
Haynes and Boone, LLP	342 Silica Rd NW
2505 N. Plano Road	Quincy
Suite 4000	WA
Richardson	US
TX	988489468
US	
75082	

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Conner, Gayle

From: TrackingUpdates@fedex.com
Sent: Monday, June 04, 2007 2:20 PM
To: Conner, Gayle
Subject: FedEx Shipment 790261068413 Delivered

This tracking update has been requested by:

Company Name: Haynes and Boone, LLP

Name: Julie Nickols

E-mail: 'not provided by requestor'

Our records indicate that the following shipment has been delivered:

Tracking number:	790261068413
Reference:	0031132.00059
Ship (P/U) date:	Jun 1, 2007
Delivery date:	Jun 4, 2007 12:13 PM
Sign for by:	B.LYBBERT
Delivered to:	Receptionist/Front Desk
Service type:	FedEx Priority Overnight
Packaging type:	FedEx Envelope
Number of pieces:	1
Weight:	0.50 lb.

Shipper Information	Recipient Information
Julie Nickols	Vincent Bryan
Haynes and Boone, LLP	344 Silica Rd NW
2505 N. Plano Road	Quincy
Suite 4000	WA
Richardson	US
TX	988489468
US	
75082	

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Label/Receipt Number: 7160 3901 9849 0364 2370

Status: Notice Left

We attempted to deliver your item at 12:35 PM on June 4, 2007 in QUINCY, WA 98848 and a notice was left. It can be redelivered or picked up at the Post Office. If the item is unclaimed, it will be returned to the sender. Information, if available, is updated every evening. Please check again later.

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Search Results

Label/Receipt Number: 7160 3901 9849 0363 7833

Status: Notice Left

We attempted to deliver your item at 1:14 PM on July 6, 2007 in QUINCY, WA 98848 and a notice was left. It can be redelivered or picked up at the Post Office. If the item is unclaimed, it will be returned to the sender. Information, if available, is updated every evening. Please check again later.

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Conner, Gayle

From: TrackingUpdates@fedex.com
Sent: Tuesday, July 03, 2007 2:25 PM
To: Conner, Gayle
Subject: FedEx Shipment 798709587250 Delivered

This tracking update has been requested by:

Company Name: Haynes and Boone, LLP

Name: Julie Nickols

E-mail: 'not provided by requestor'

Our records indicate that the following shipment has been delivered:

Tracking number:	798709587250
Reference:	0031132.00059
Ship (P/U) date:	Jul 2, 2007
Delivery date:	Jul 3, 2007 12:16 PM
Sign for by:	T.ROBERTSON
Delivered to:	Receptionist/Front Desk
Service type:	FedEx Priority Overnight
Packaging type:	FedEx Envelope
Number of pieces:	1
Weight:	0.50 lb.

Shipper Information	Recipient Information
Julie Nickols	Vincent Bryan
Haynes and Boone, LLP	342 Silica Rd NW
2505 N. Plano Road	Quincy
Suite 4000	WA
Richardson	US
TX	988489468
US	
75082	

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Conner, Gayle

From: TrackingUpdates@fedex.com
Sent: Tuesday, July 03, 2007 2:25 PM
To: Conner, Gayle
Subject: FedEx Shipment 790282786660 Delivered

This tracking update has been requested by:

Company Name: Haynes and Boone, LLP

Name: Julie Nickols

E-mail: 'not provided by requestor'

Our records indicate that the following shipment has been delivered:

Tracking number:	790282786660
Reference:	0031132.00059
Ship (P/U) date:	Jul 2, 2007
Delivery date:	Jul 3, 2007 12:20 PM
Sign for by:	T.ROBERTSON
Delivered to:	Receptionist/Front Desk
Service type:	FedEx Priority Overnight
Packaging type:	FedEx Envelope
Number of pieces:	1
Weight:	0.50 lb.

Shipper Information	Recipient Information
Julie Nickols	Vincent Bryan
Haynes and Boone, LLP	344 Silica Rd NW
2505 N. Plano Road	Quincy
Suite 4000	WA
Richardson	US
TX	988489468
US	
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**SUPPLEMENTAL DECLARATION
FOR REISSUE
PATENT APPLICATION
TO CORRECT "ERRORS" STATEMENT
(37 CFR 1.175)**

Attorney Docket Number	31132.59/ PC904.03
First Named Inventor	Vincent Bryan
COMPLETE if known	
Application Number	09/776,394
Filing Date	02/02/2001
Art Unit	3738
Examiner Name	Stewart, Alvin J.

I/We hereby declare that:

Every error in the patent which was corrected in the present reissue application, and which is not covered by the prior oath(s) and/or declaration(s) submitted in this application, arose without any deceptive intention on the part of the applicant.

We acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

I/We hereby declare that all statements made herein of my/our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Name of Sole or First Inventor:	<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle [if any])	Family Name or Surname	
Vincent	Bryan	
Inventor's Signature		
Date		
Name of Second Inventor:	<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle [if any])	Family Name or Surname	
Alex	Kunzler	
Inventor's Signature		
Date	5.21.07	

Additional inventors or legal representatives(s) are being named on the _____ supplemental sheets PTO/SB/02A or 02LR attached hereto.

This collection of information is required by 37 CFR 1.175. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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